

BEFORE THE HONBLE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION CRIMINAL NO.....OF 2019

IN THE MATTER OF

...Petitioner

Versus

1. Union of India,

The Ministry of Environment,
Forest and Climate Change,
Through its Chief Secretary,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi-110003,

2. The Government of NCT Delhi,

Through its Chief Secretary,
Old Secretariat,
Delhi-110054,

3. Commissioner of Police,

I P Estate,
New Delhi-110002.

4. Elephant Rehabilitation Centre,

Through its Director/Officer in charge,
Tahri, Bansantour,
Yamuna Nagar Dst.
Haryana-135021.

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR A SUITABLE WRIT ORDER DIRECTION INCLUDING A WRIT IN THE NATURE OF HABEAS CORPUS FOR A DIRECTION TO THE RESPONDENT NO. 1 TO 4 FOR THE PRODUCTION AND RELEASE OF "LAKSHMI" , THE LAST ELEPHANT OF DELHI PRESENTLY UNDER ILLEGAL DETENTION WITH RESPONDENT NO. 4 AS PETITIONER'S AND LAKSHMI'S FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLE 14, 19 & 21 ARE VIOLATED BY THE RESPONDENTS .

MOST RESPECTFULLY SHOWETH.

1.The petitioner, hailing from Beghu Sarai Dst, Bihar belonging to a poverty ridden family comprising of his unemployed wife, 3 children aged 7,3, and 2 , Father aged 65,unemployed , suffering from Bronchial Disease for the last more than 20 years, Mother suffering From Kidney problem for the last more than 5 years , with 2 unemployed brothers , the youngest brother aged 18 years was studying in 9th class in Delhi till the arrest of the petitioner, with three sisters out which two are married and the petitioner is the only breadwinner of the family , is approaching this Hon'ble court for justice, who was imprisoned on absolutely false, frivolous and imaginary, improbable grounds, that he committed theft of an Elephant named "Lakshmi" and kept her hidden in the heart of Delhi .

2.The petitioner was living in a Jhuggi in Laxmi Nagar, under Yamuna Bridge, New Delhi where electricity, hygiene and even potable water is a luxury and was taking care of the whole family being the sole bread winner. The petitioner after completing 3rd standard was forced to give up his studies and take to manual labour at a tender age of 10, because of his ailing parents and a dozen mouths to feed. Having studied only till 3rd class, the petitioner knew nothing other than menial jobs such as cleaning and

household works etc. Somewhere around 2008 the petitioner was employed in an Elephant shed which housed 2 elephants, namely “Lakshmi” and “Moti” for cleaning. Gradually, the petitioner befriended one of the elephants, named Lakshmi and began interacting with it, feeding it, bathing it and tending to it when it got sick. Their friendship mushroomed to such an extent that Lakshmi after some time totally refused to accept food, if not medicines from anybody other than the petitioner. A true copy of the Aadhaar Card of the petitioner is enclosed herewith as **ANNEXURE-P-1(Pages....to....)**

3. The Elephant Lakshmi could sense the presence of the petitioner even from 2 to 3 km by smell, and communicated with her like a family member, and nobody else knew Lakshmi better than the petitioner. The family members of the petitioner also loved Lakshmi, and they were living almost like a joint family. A true copy of the photo of a wounded Lakshmi is enclosed herewith as **ANNEXURE-P-2 (Pages....to.....)**

4. The brief facts of the case leading to the filing of the present writ petition are as follows: -

A. On 06.07.2019 an FIR u/s 186, 353, 332, 34 of the IPC, 1860 was registered at Shakarpur Police Station, in Delhi, in which the name of the petitioner is not there. It is not within the

knowledge of the petitioner the events leading to the registration of the said FIR or its details. A true translated copy of the FIR dated 06.07.2019 u/s 186, 353, 332, 34 of the IPC, registered at Shakarpur Police Station is enclosed herewith as **ANNEXURE-P-3. (Pages.....to.....)**

B. On the night of September 17th, 2019, at around 10. 30. PM while sleeping near his Juggi , with Lakshmi nearby, the local police inspectors arrested the petitioner and took custody of Lakshmi in the Shakarpur Police thana. The name of the petitioner is not in the FIR.

C. On 17.09.2019, at around 11.30 PM, the petitioner was brutally beaten by some police officials/ constables who asked about his master's whereabouts. The petitioner was also badly beaten by some police officers as part of custodial interrogation in violation of D K Basu Guidelines of this Hon'ble court.

D. After which on the next day on 18.09.2019 at around 8 AM, the petitioner was forcefully paraded by 4 police officers in front of a sea of media reporters. The illegal arrest of Lakshmi along with the petitioner made headlines in the print, visual and social media, having 20,10,000 search

results on the query “Lakshmi + Elephant + Delhi” on google.com with the front-page news in the national and regional newspapers.

E. On 19.09.2019 at around 5 PM the petitioner was remanded to Mandoli jail. A true copy of the media reports regarding the arrest of the petitioner along with Lakshmi, missing for two months is enclosed herewith as **ANNEXURE-P-4.(Pages....to.....)**.

F. A true translated copy of the Charge sheet dated 18.11.2019 u/s 186, 353, 332, 174A, 34 of the IPC, registered at Shakarpur Police Station is enclosed herewith as **ANNEXURE-P-5.(Pages....to.....)**.

G. On 18.09.2019, while the petitioner was under detention of the police, 4 police officers forcefully brought the petitioner before media reporters and there was a media briefing in gross violation of the “rights of the accused under police custody”. Lakshmi was badly beaten and tortured and coerced into boarding a truck and was then sent to Elephant rehabilitation centre in Haryana in patent disregard to the orders of the Hon’ble High Court of Delhi. The petitioner believes that, the

detention of Lakshmi was illegal, and against the law of the land.

H. On 19.09.2019 the petitioner was kept in Mandoli jail for almost 68 days, despite he is innocent, and no way connected with the alleged offence and the allegation against the petitioner is improbable. Even otherwise, how a person can hide an Elephant in the heart of Delhi for 2 Months from the eyes and ears of the most competent police force, i.e. The Delhi Police? . It is a false, frivolous absurd and improbable story made by the respondents to implicate the petitioner. The petitioner was released on 25.11.2019 after spending 68 days in jail. A true copy of the order dated 22.11.2019 granting bail to the petitioner dated 22.11.2019 by Karkardooma courts; Delhi in Bail Application No.1662/2019 is enclosed herewith as **ANNEXURE-P-6(Pages....to....)**.

I. A true copy of the screen shot of the first page of the search results on the query “Lakshmi + Elephant + Delhi” on google.com numbering 21,20,000 is enclosed herewith as **ANNEXURE-P-7. (Pages....to....)**.

J. A true copy of the media report regarding the habeas Corpus order on behalf of an Elephant

dated 19.11.2018 downloaded on 11.12.2019 is enclosed herewith as **ANNEXURE-P-8. (Pages....to....).**

K. The petitioner though from an extremely poor background from Bihar, while in jail lost 15 Kilograms in 68 days. The petitioner was granted bail by the Karkardooma court with a bail bond of Rs. 50,000. Immediately on being released, the petitioner enquired about Lakshmi, and could not meet her and came to know from reliable sources that, her life is in danger, as she is suffering from a major illness. The video records on “YouTube”, evidence, torture on Lakshmi while in police detention and transportation and the illegal act of disclosing the identity of the petitioner “accused while in police custody” is in violation of his fundamental rights..

L. The petitioner is compelled to approach this Hon’ble court mainly to deliver justice to “Lakshmi”, though he is not the owner, and not in contact with the owner or under collusion , but as a near, dear and close friend of Lakshmi, and also in the capacity of a Mahout. The concerned forest officials were roped in, who under brutal force and duress made Lakshmi board a truck when she

showed no signs of obedience. She was struck on her trunk, after which she started profusely bleeding. Chains and ropes were wound round her legs to pull her onto the truck. She was then sent to Elephant rehabilitation centre in Haryana. The video records on YouTube evidence the same. The torture on Lakshmi was at a time, when a sound with smile from the petitioner was enough to move her to any desired destination .

5. Seriously aggrieved and with no other effective alternative remedy to save the life of Lakshmi, the petitioner herein is filing the present writ petition on the following grounds without prejudice to one another.

GROUND

A. Because this Hon'ble court in 2014 in the case of Animal Welfare Board of India vs. A. Nagaraja and others (Jallikattu case) reported in (2014) 7 SCC 547 recognized the dignity and honour of animals under Article 21 of the Constitution. In this case, this Hon'ble Court held that, so far as animals are concerned, "life" means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity. An animal also has honour and

dignity which cannot be arbitrarily deprived of. Lakshmi also has the honour and dignity, so to speak, and it has the right to be treated in a dignified manner, not being subjected to torture and pain. She is also having a right to live in the company of her choice especially the person whom she loves the most, the person who understands her the most, the person who can communicate with her the most, the person who is ready to give even his life for her. It is a relationship only a Mahout can well understand.

B. Because the scope of the statement 'not being subjected to torture' extends to the fact that an entity cannot be disengaged from someone whom it is very closely attached with. In this case, secluding Lakshmi from the petitioner, would equate to mental agony considering the extent to which they were associated for the last more than 10 years, and the fact that Lakshmi only accepted food and medicines when the petitioner administered it to her. Keeping them away would evidently bring torment to the petitioner but equally so to Lakshmi. The petitioner regarded and treated Lakshmi as an equal, and in no way inferior, and she was very intelligent, brilliant, affectionate, obedient, enjoyed music, was loving and caring.

C. Because the Darwinian theory of evolution, postulated by the English naturalist and biologist states that, “a species can change over time, that new species come from pre-existing species, and that all species share a common ancestor.” Going by the above proposition, we can safely say that even an animal on the streets and a human has evolved from a common parent and the fact that one faction of the successors of this common parent owing to factors such as natural selection and better adaptability, transformed into what it is today, i.e. a human being, is true in all its actuality. Considering everything, one can and one must confidently say that even that animal on the street and a human being must enjoy equal status in the ecosystem as a whole and any dominance of any kind prejudicial to the interest of the other is legally, morally and ethically wrong. What makes Human beings, as a biological class, superior and exercise control over the animals with the advent of a structured society? What makes humans draft and swear allegiance to a constitution and a system that protects the interests of only the people that thrive within a particular area and not the fauna and flora also that thrive within and play a momentous role in their wellbeing and welfare? Flora and Fauna must

also have an equal share of the protection by virtue of the rights that the constitution awards to the people.

D. Because the preamble to the Indian constitution starts with “WE,” and nowhere it’s implied that it should mean the people only, and “having not a single Elephant in Delhi” cannot be considered as an achievement, in the letter and spirit of the constitution. Though the Constitution of India is supreme, but the “laws of nature” are above everything else, including the constitution. Even otherwise, any actions/steps against the “laws of nature” are not in the good spirit and letters of the constitution. All laws, rules and constitution need to be interpreted in harmony with the laws of nature.

E. Because in the words of His Lordship Hon'ble Mr. Justice V.R. Krishna Iyer (Former Judge, Supreme Court of India):

“The human species must consider itself an element of the terrestrial habitat and must respect co-existence and symbiosis. Any failure to respect this is an attack on nature, prejudicial to the whole ensemble of inanimate and animate beings. The universality of divinity is a fundamental faith of Indian humanity rooted in the “Rig Veda” and manifest in the spiritual core of all religions. The ancients have stated

that God sleeps in the mineral, awakens in the vegetable, walks in the animals and thinks in man'. "The unity that runs through creation is thus a basic truth. Nature has thus an integral relation with animalia, and homo sapiens are an inseparable part of the evolutionary spirit, the highest peak of ecological ascent. These great values are reflected in our constitution, a rare good fortune and a binding recognition. The State and the citizen are duty bound to promote and preserve ecology and environment as mandated by Articles 48A and 51A. ".Relocating Lakshmi is not the answer , rather this attitude is the beginning of the problems, leading to major disasters in the pipeline .

F. Because the height of injustice lies in the fact that, the relocation of Lakshmi from Delhi was barbaric, after severe torture, without seeking or permitting the petitioner to help her, the only person who can help her, and in violation of the orders of the Hon'ble High Court of Delhi.

G. Because the petitioner immediately after being released from Jail on 25.11.2019 enquired about Lakshmi and came to know from reliable source that she is seriously sick and needs immediate care. Hence the present writ petition of Habeas Corpus for the

release of Lakshmi from the illegal detention by the respondents.

- H. Because in a Brazilian case, *Suiça v Zoo of Salvador*, a writ of “Habeas Corpus” was issued for the release of a chimpanzee named *Suiça* and deemed it a ‘non-human legal person’, with inherent rights and was released.
- I. Because in United States legal history and the first time anywhere on behalf of an Elephant, a judge had issued a Habeas Corpus order on behalf of a nonhuman animal.
- J. Because the Brazilian constitution too vehemently endorses animal’s rights of which article 225 places a duty on the government and community to “defend and to preserve the environment for present and future generations.” Part of this duty requires them to “protect the fauna and the flora.” It recognises that animals are sentient beings, which can suffer and feel pain, being directly affected by human behaviour.
- K. Because the Austrian Animal Welfare Act, 2004, equates the importance of animal life to that of human life. It suggests that the protection and wellbeing of animals should be held to a value that is equal to humankind.

L. Because Switzerland constitutionally recognizes animals, with a provision warranting the protection of 'the dignity of the creature'.

M. The German Constitution reads, "The state takes responsibility for protecting the natural foundations of life and animals in the interest of future generations."

N. Because the barbaric act of beating and torture inflicted on Lakshmi for relocating contravenes section 3 and 11 of the PCA Act, 1960. Section 11 of the Prevention of Cruelty to Animals Act, 1960 states that, "beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treating any animal so as to subject it to unnecessary pain or suffering or causes, or being the owner permits, any animal to be so treated shall be punished." Moreover section 3 of the same states that, "It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering." For every domesticated Elephant, a Mahout is a part and parcel of their life than anybody else.

O. Because in Karnail Singh and Ors vs State of Haryana, the Hon'ble High court of Punjab and Haryana said that, "All the animals have honour and

dignity. Every specie[s] has an inherent right to live and is required to be protected by law. The rights and privacy of animals are to be respected and protected from unlawful attacks. The Corporations, Hindu idols, holy scriptures, rivers have been declared legal entities, and thus, in order to protect and promote greater welfare of animals including avian and aquatic, animals are required to be conferred with the status of legal entity/legal person. The animals should be healthy, comfortable, well nourished, safe, able to express innate behaviour without pain, fear and distress. They are entitled to justice. The animals cannot be treated as objects or property.”.

P. Because an animal also has honour and dignity which cannot be arbitrarily deprived of. The worth and importance of animal life is equal to human life. Furthermore, article 51A of the constitution places a duty on every citizen to “protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”

Q. Because the Hon’ble High Court of Gujarat in the case of Mahisagar Mataji Samaj Seva Trust through President vs. State of Gujarat through Secretary, held that, “cattle just like human-beings possess life in

them. Even an animal has a right to say that its liberty cannot be deprived except in accordance with law. We have noticed that there are many enactments which has recognized rights of the animals. Be it cattle or any other animal.”

R. Because in *Joginder Kumar vs State of U.P. and Others*, the Hon’ble Supreme Court of India held that ‘the arrest should not be merely on suspicion about the person’s complicity in the crime and the police officer must be satisfied about necessity and justification of such arrest on the basis of some investigation and the reasons for arrest must be recorded by the police officer in his diary and the arrest should normally be avoided except in cases of heinous crime.

S. Because in *Bhim Singh, MLA Vs. State of J&K and Ors*, the Hon’ble Supreme Court held that “ the police officers should have the greatest regard for personal liberty of citizens, their mala fide, high handed and authoritarian conduct in depriving the personal liberty of a person has to be strongly condemned.” The petitioner shouldn’t have been arrested by the police officers without concrete proof substantiating his guilt.

T. Because it is evidently a wilful attempt by the police officials to malign the petitioner and sabotage his right to privacy. Consequently, he became prey to a media trial, a concept which implies the devastation of a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law.

U. Because the petitioner was subjected to custodial violence. The importance of affirmed rights of every human being needs no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law.

V. Because Elephant was an integral part of Delhi from time immemorial, as part of Poojas associated with temples, Social gatherings, and a lot more. The ratio of forcing the elephants to move out of Delhi ,on the ground of space shortage, is legally, morally and ethically incorrect, and against the spirit of the

Constitution . Interest of justice and ends of justice requires providing adequate space for elephants in Delhi, and relocating all Elephants out of Delhi for whatever reasons ,is illegal, immoral, against constitutional values , philosophy and morality .

6. The petitioner is not having any other alternate, effective and immediate remedy other than filing the present writ petition. The petitioner reserves the right to add additional grounds and additional prayers.

7. Present writ petition is maintainable for the reasons elaborately mentioned in the List of dates and grounds, and this Hon'ble court is having the Jurisdiction to entertain the present Writ petition, as the petitioner is a citizen of India, and there is a violation of Article 14,19 and 21 of the constitution of India on the petitioner and the victim Lakshmi, whose life is in danger. Further to this the detention of Lakshmi, a resident of Delhi with respondent no. 4, who is in the state of Haryana , even in violation of the orders of the court is illegal .There is precedent of issuance of Habeas Corpus for the release of Elephant, from a democratic county. According to the customs, traditions, practices, followed from time immemorial, including religious practices, and based on various Articles of the Constitution of India, an Elephant is also entitled to dignified life free from cruelty, with love, care and affection, which is also a part and parcel of Article 21.

8. The petitioner has not filed any other writ petition before this Hon'ble court or in the Hon'ble high court of Delhi, or in the Hon'ble High Court of Punjab and Haryana, or in any other court for the same relief.

9. The petitioner reserves the right to file additional documents and grounds at the time of arguments.

PRAYER

In the above mentioned facts and circumstances, it is most respectfully prayed that, this Hon'ble Court may graciously be pleased to:

- A. Issue a writ in the nature of Habeas Corpus or any other appropriate writ or orders directing the respondent no. 1 to 4 to release "Lakshmi" from the illegal detention by the respondent no. 4 in the state of Haryana , and bring her back to her usual place of dwelling in Delhi ,as her life is in danger .
- B. Grant visitation rights to the petitioner to meet Lakshmi at the cost of the respondents , as the petitioner is extremely poor with no source of income, all to save the life of Lakshmi.
- C. Summon all video and audio recordings in the police station P.S. Shakarpur ,in F.I.R. no. 0188 ,from 17.09.2019 to 19.09.2019 to assess the cruelty inflicted upon Lakshmi, and to take appropriate legal

actions against the persons responsible for this cruelty inflicted on Lakshmi.

D. Pass such any other order, relief or direction as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience including awarding the cost of the present writ petition.

FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL EVER PRAY.

Drafted by-Joe Sebastian and Gitanjali Vinod

Research by- Adv. Paul John Edison
and Adv. Sweta Prashar

Settled by-Adv. Wills Mathews

Drafted On-09.12.2019
Settled on -10.12.2019
Filed on 12.12.2019

Filed by-

FNO/wills/2721/2019/A/10122019

BEFORE THE HONBLE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION CRIMINAL NO.....OF 2019

IN THE MATTER OF

Mr. Saddam Petitioner

Versus

Union of India and Ors. Respondents

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION OF ANNEXURE P-3 and P-5.

To

The Hon'ble Chief Justice of India

And His Companion Judge of the

Supreme Court of India

The humble application of the
above-named Petitioner

MOST RESPECTFULLY SHOWETH:

1.The petitioner, hailing from Beghu Sarai Dst, Bihar belonging to a poverty ridden family is approaching this Hon'ble court for justice, who was imprisoned on absolutely false ,frivolous and imaginary, improbable grounds .

2. That today the petitioner filed the accompanying writ petition and the contents of the same may kindly be treated as part and parcel of the present application and the same is not repeated herein for the sake of brevity.

3. That the annexure P-3 and P-5 are in Hindi and due to the urgency of filing ,the petitioner got it translated by a person having knowledge of Hindi .

4. Much prejudice will be caused to the applicant if the present application is not allowed.

PRAYERS

In the premises, it is most respectfully prayed that this Hon'ble Court be pleased to:

- a) exempt the petitioner from filing official translation of Annexure P-3; and P5.

- b) pass any other order or orders that this Hon'ble Court may deem fit and proper in the interest of justice and award cost to the husband of the Petitioner.

FOR WHICH ACT OF KINDNESS, THE PETITIONER, AS DUTY IN BOUND, SHALL EVER PRAY.

BEFORE THE HON'BLE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION CRIMINAL NO.....OF 2019

IN THE MATTER OF

Mr. Saddam Petitioner

Versus

Union of India and Ors. Respondents

MEMO OF PARTIES

1. **Mr. Saddam,**
S/o. Mohd Israil,
Aged 26 years
House No. B-144/Thokar No. 7 ,
Near Hati Shala, ITO,
Yamuna Bridge, Laxmi Nagar,
Delhi -110092 ...Petitioner

Versus

1. **Union of India,**
The Ministry of Environment,
Forest and Climate Change,
Through its Chief Secretary,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi-110003,
2. **The Government of NCT Delhi,**
Through its Chief Secretary,
Old Secretariat,
Delhi-110054,
3. **Commissioner of Police,**
I P Estate,
New Delhi-110002.
4. **Elephant Rehabilitation Centre,**
Through its Director/Officer in charge,
Tahri, Bansantour,
Yamuna Nagar Dst.
Haryana-135021.

ADVOCATE FOR THE PETITIONER:

Date-12.12.2019